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EXAMINER

GARG, YOGESH C

ART UNIT PAPER NUMBER

3625

DATE MAILED: 10/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/586,742

Applicant(s)

VAN LUCHENE ET AL. 

Examiner

Yogesh C Garg

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 June 2004.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-59 and 90-94 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-59 and 90-94 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

1. Amendment received on June 28, 2004 is acknowledged and entered. The applicant has cancelled claims 83-89 and amended independent claims 1, 90, 93 and 94. Currently claims 1-59 and 90-94 are pending for examination.

Response to Arguments

2.1 Applicant's arguments and amendment to "Abstract", see Remarks, page 17, filed on June 28, 2004, with respect to "Abstract" have been fully considered and are persuasive. The objection to "Abstract" in previous Office action has been withdrawn.

2.2. Applicant's arguments, see Remarks, pages 17-19, filed on June 28, 2004, with respect to rejection of claims 1-11, 13, 15-59, 83-89, 93, and 94 under 35 U.S.C. 101 have been fully considered and are not persuasive. The examiner still maintains the rejection sustainable as submitted in the previous Office action. However, due to current amendments to independent claims 1 and 94 rejection of claims 1-11, 13, 15-59, and 94 under 35 U.S.C. 101 is withdrawn. Regarding claim 93, notwithstanding the applicant's arguments the recited limitation in claim 93 does not include the term "computer-readable medium" and therefore the rejection of claim 93 under 35 U.S.C. 101 is maintained. By simply reciting "medium" it does not imply a computer-readable medium. It could be a paper medium and which does not conform to MPEP 2106 (IV)(B)(1)(a).

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2.3. Applicant's arguments, see Remarks, pages 19-22, filed on June 28, 2004, with respect to rejection of claims 23, 24, and 28 under 35 U.S.C. 112, second paragraph have been fully considered and are persuasive to withdraw rejection of claims 23 and 24 but not persuasive enough to withdraw rejection of claim 28 for following reasons:

See .MPEP <2173.03 [R-1] Inconsistency Between Claim *>and< Specification Disclosure or Prior Art : *Although the terms of a claim may appear to be definite, inconsistency with the specification disclosure or prior art teachings may make an otherwise definite claim take on an unreasonable degree of uncertainty. In re Cohn, 438 F.2d 989, 169 USPQ 95 (CCPA 1971); In re Hammack, 427 F.2d 1378, 166 USPQ 204 (CCPA 1970). In Cohn, the claim was directed to a process of treating a surface with a corroding solution until the metallic appearance is supplanted by an "opaque" appearance. Noting that no claim may be read apart from and independent of the supporting disclosure on which it is based, the court found that the description, definitions and examples set forth in the specification relating to the appearance of the surface after treatment were inherently inconsistent and rendered the claim indefinite.*

Notwithstanding the subject matter recited in claim 28, that is "measuring a current performance of the controller and that evaluation rule is based on the current performance of the controller", the disclosure/definitions/examples set forth in the specification (see page 42, lines 3-6) states that the controller measures a current performance parameter related to a rate at which transactions are being completed. Thus the disclosure/definitions/examples set forth in the specification are inconsistent with the limitation recited in claim 28 and renders the claim indefinite. Therefore rejection of claim 28 under 35 U.S.C. 112, second paragraph is maintained.

2.4. Applicant's arguments filed on June 28, 2004 (see Remarks, pages 22-24, concerning rejection of claims 1-15, 19-48, 50-59 and 93 under 35 U.S.C. 102 (e) have been fully considered but they are not persuasive for following reasons:

(i) The examiner could not find support for the newly added limitation, "wherein the evaluation rule is a rule other than a search term input by the buyer". This limitation constitutes new matter and fails to comply with the requirements of the first paragraph of 35 U.S.C. 112.

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(ii) The reference Ojha does teach that the evaluation rule is a rule other than a search term input by the buyer (see at least col.3, line 66-col.4, line 23, " *the seller may specify a set of business rules according to which automated responses to the posted bids are generated. The response to a bid may be an acceptance of the bid or a counteroffer. According to various embodiments, market information is displayed along with the list of current bids to help the seller with responding to any or all of the bids, i.e., decision-making support. The seller (or the business rules specified by the seller) can then use the demand data to develop a strategy for responding to one or more bids. If the seller's response is an acceptance of the buyer's bid, the buyer is enabled to complete the transaction if he so chooses.* ". Note: In Ojha, specifying business rules correspond to determining an evaluation rule on the basis of which the sellers and buyers offers are matched and sellers either accept the buyers bid and completion of the transaction by making buyer's payment and providing shipping information to the seller corresponds to arranging for the seller to sell the item to the buyer. Also the evaluation rule based on seller's offer is a rule other than a search term input by the buyer. See also col.4, lines 49-67)..

2.5 Applicant's arguments filed on June 28, 2004 (see Remarks, pages 25-26, concerning rejection of claims 16-18 and 49 under 35 U.S.C. 103 (a) have been fully considered but they are not persuasive for the same reasons as analyzed in paragraphs under 2.4 above.

2.6 Applicant's arguments filed on June 28, 2004 (see Remarks, pages 24-25, concerning rejection of claim 94 under 35 U.S.C. 102 (e) have been fully considered but they are not persuasive. The reference Ojha does disclose determining buyer offer code and seller offer code and matching them (see at least see at least col.3, line 66-col.4, line 23, " *the seller may specify a set of business rules according to which automated*

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responses to the posted bids are generated. The response to a bid may be an acceptance of the bid or a counteroffer. According to various embodiments, market information is displayed along with the list of current bids to help the seller with responding to any or all of the bids, i.e., decision-making support. The seller (or the business rules specified by the seller) can then use the demand data to develop a strategy for responding to one or more bids. If the seller's response is an acceptance of the buyer's bid, the buyer is enabled to complete the transaction if he so chooses. According to a particular embodiment, this is accomplished by means of an HTML link to the seller's web site. Alternatively, the transaction site can make the buyer's payment and shipping information available to the seller. ". Note: In Ojha, buyer's bid and seller's acceptance of the bid correspond to the buyer's code and seller's code respectively which are two matched for the completion of transaction based upon business rules. See also col.4, lines 49-67).

This is a Final rejection.

Priority

3. The later-filed application must be an application for a patent for an invention which is also disclosed in the prior application (the parent or original nonprovisional application or provisional application); the disclosure of the invention in the parent application and in the later-filed application must be sufficient to comply with the requirements of the first paragraph of 35 U.S.C. 112. See *Transco Products, Inc. v. Performance Contracting, Inc.*, 38 F.3d 551, 32 USPQ2d 1077 (Fed. Cir. 1994). In the instant case, the newly added limitation, "wherein the evaluation rule is a rule other than a search term input by the buyer", subject matter of the currently amended claims 1, 90 and 93 is not supported by the parent application 60/176,158, filed on January 14, 2000. Therefore currently amended claims 1-59 and 90-93 do not qualify to claim priority to the

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filing date of the provisional application 60/176,158 to comply with the requirements of the first paragraph of 35 U.S.C. 112..

Claim Rejections - 35 USC § 101

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4.1. Claim 93 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

As an initial matter, the United States Constitution under Art. I, §8, cl. 8 gave Congress the power to "[p]romote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries". In carrying out this power, Congress authorized under 35 U.S.C. §101 a grant of a patent to "[w]hoever invents or discovers any new and useful process, machine, manufacture, or composition or matter, or any new and useful improvement thereof." Therefore, a fundamental premise is that a patent is a statutorily created vehicle for Congress to confer an exclusive right to the inventors for "inventions" that promote the progress of "science and the useful arts". The phrase "technological arts" has been created and used by the courts to offer another view of the term "useful arts". See *In re Musgrave*, 167 USPQ (BNA) 280 (CCPA 1970). Hence, the first test of whether an invention is eligible for a patent is to determine if the invention is within the "technological arts".

Further, despite the express language of §101, several judicially created exceptions have been established to exclude certain subject matter as being patentable subject matter covered by §101. These exceptions include "laws of nature", "natural phenomena", and "abstract ideas". See *Diamond v. Diehr*, 450, U.S. 175, 185, 209

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USPQ (BNA) 1, 7 (1981). However, courts have found that even if an invention incorporates abstract ideas, such as mathematical algorithms, the invention may nevertheless be statutory subject matter if the invention as a whole produces a "useful, concrete and tangible result." See *State Street Bank & Trust Co. v. Signature Financial Group, Inc.* 149 F.3d 1368, 1973, 47 USPQ2d (BNA) 1596 (Fed. Cir. 1998).

This "two prong" test was evident when the Court of Customs and Patent Appeals (CCPA) decided an appeal from the Board of Patent Appeals and Interferences (BPAI). See *In re Toma*, 197 USPQ (BNA) 852 (CCPA 1978). In *Toma*, the court held that the recited mathematical algorithm did not render the claim as a whole non-statutory using the Freeman-Walter-Abele test as applied to *Gottschalk v. Benson*, 409 U.S. 63, 175 USPQ (BNA) 673 (1972). Additionally, the court decided separately on the issue of the "technological arts". The court developed a "technological arts" analysis:

The "technological" or "useful" arts inquiry must focus on whether the claimed subject matter...is statutory, not on whether the product of the claimed subject matter...is statutory, not on whether the prior art which the claimed subject matter purports to replace...is statutory, and not on whether the claimed subject matter is presently perceived to be an improvement over the prior art, e.g., whether it "enhances" the operation of a machine. *In re Toma* at 857.

In *Toma*, the claimed invention was a computer program for translating a source human language (e.g., Russian) into a target human language (e.g., English). The court found that the claimed computer implemented process was within the "technological art" because the claimed invention was an operation being performed by a computer within a computer.

The decision in *State Street Bank & Trust Co. v. Signature Financial Group, Inc.* never addressed this prong of the test. In *State Street Bank & Trust Co.*, the court found

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that the "mathematical exception" using the Freeman-Walter-Abele test has little, if any, application to determining the presence of statutory subject matter but rather, statutory subject matter should be based on whether the operation produces a "useful, concrete and tangible result". See *State Street Bank & Trust Co.* at 1374. Furthermore, the court found that there was no "business method exception" since the court decisions that purported to create such exceptions were based on novelty or lack of enablement issues and not on statutory grounds. Therefore, the court held that "[w]hether the patent's claims are too broad to be patentable is not to be judged under §101, but rather under §§102, 103 and 112." See *State Street Bank & Trust Co.* at 1377. Both of this analysis goes towards whether the claimed invention is non-statutory because of the presence of an abstract idea. Indeed, *State Street* abolished the Freeman-Walter-Abele test used in *Toma*. However, *State Street* never addressed the second part of the analysis, i.e., the "technological arts" test established in *Toma* because the invention in *State Street* (i.e., a computerized system for determining the year-end income, expense, and capital gain or loss for the portfolio) was already determined to be within the technological arts under the *Toma* test. This dichotomy has been recently acknowledged by the Board of Patent Appeals and Interferences (BPAI) in affirming a §101 rejection finding the claimed invention to be non-statutory. See *Ex parte Bowman*, 61 USPQ2d (BNA) 1669 (BdPatApp&Int 2001).

In the present application, the claim 93 is non-statutory, see MPEP 2106 (IV)(B)(10 (a)), because the article of manufacture, that is a medium storing the instructions is not a computer-readable medium and any medium, such as paper storing instructions is not capable of causing functional change in the computer. To overcome this rejection the Examiner recommends that Applicant amend the claims to include " a

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computer-readable medium storing instructions", instead of --a medium storing instructions--.

Claim Rejections - 35 USC § 112

5.1 The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-59 and 90-93 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The currently amended independent claims 1, 90 and 93 include the limitation, "wherein the evaluation rule is a rule other than a search term input by the buyer", was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Also see MPEP

2173.05(i) Negative Limitations:

" So long as the boundaries of the patent protection sought are set forth definitely, albeit negatively, the claim complies with the requirements of 35 U.S.C. 112, second paragraph. Any negative limitation or exclusionary proviso must have basis in the original disclosure. If alternative elements are positively recited in the specification, they may be explicitly excluded in the claims. See In re Johnson, 558 F.2d 1008, 1019, 194 USPQ 187, 196(CCPA 1977) ("[the] specification, having described the whole, necessarily described the part remaining."). See also Ex parte Grasselli, 231 USPQ 393 (Bd. App. 1983), aff 'd mem., 738 F.2d 453 (Fed. Cir. 1984). The mere absence of a positive recitation is not basis for an exclusion. Any claim containing a negative limitation which does not have basis in the original disclosure should be rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. Note that a lack of literal basis in the specification for a negative limitation may not be sufficient to establish a prima facie case for lack of descriptive support. Ex parte Parks, 30 USPQ2d 1234, 1236 (Bd. Pat. App. & Inter. 1993). See MPEP § 2163 - §2163.07(b) for a discussion of the written description requirement of 35 U.S.C. 112, first paragraph."

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In view of the above, independent claims 1, 90, 93 and their dependencies 2-59 and 91-92 are rejected.

5.2 The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 28 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 28 states measuring a current performance of the controller and determining the evaluation rule is based on the current performance of the controller. It is unclear as how the measure of current performance of the controller and determining the evaluation rule based on the current performance of the controller are functionally integrated with the step of matching the buyer and seller offers based upon the evaluation rule as recited in claim 1, of which the claim 28 is a dependency.

See .MPEP <2173.03 [R-1] Inconsistency Between Claim *>and< Specification Disclosure or Prior Art : *Although the terms of a claim may appear to be definite, inconsistency with the specification disclosure or prior art teachings may make an otherwise definite claim take on an unreasonable degree of uncertainty. In re Cohn, 438 F.2d 989, 169 USPQ 95 (CCPA 1971); In re Hammack, 427 F.2d 1378, 166 USPQ 204 (CCPA 1970). In Cohn, the claim was directed to a process of treating a surface with a corroding solution until the metallic appearance is supplanted by an "opaque" appearance. Noting that no claim may be read apart from and independent of the supporting disclosure on which it is based, the court found that the description, definitions and examples set forth in the specification relating to the appearance of the surface after treatment were inherently inconsistent and rendered the claim indefinite.*

Notwithstanding the subject matter recited in claim 28, that is " measuring a current performance of the controller and that evaluation rule is based on the current performance of the controller", the disclosure/definitions/examples set forth in the specification (see page 42, lines 3-6) states that the controller measures a current performance parameter related to a rate at which transactions are being completed. Thus the disclosure/definitions/examples set forth in the specification are inconsistent

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with the limitation recited in claim 28 and renders the claim indefinite. Therefore rejection of claim 28 under 35 U.S.C. 112, second paragraph is maintained. As it is not possible to relate the limitations of claim 28 with those of claim 1 based on the above analysis, claim 28 is not being further treated on merits for prior art rejection.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-15, 19-48, 50-59, and 90-94 are rejected under 35 U.S.C. 102(e) as being anticipated by Ojha.

Regarding claim 1, Ojha discloses a method for a controller to facilitate a transaction (see at least abstract, and FIG.1. Note: In Fig.1, Web site 102 corresponds to the claimed controller in the application), comprising:

receiving seller offer information associated with an item being offered for sale by a seller (see at least col.2, lines 57-59, and Fig.5. Fig.5 displays the seller [IBM] offers and offer information associated with an item like Thinkpad. See also col.4, lines 49-67);

receiving buyer offer information associated with a buyer offering to make a purchase (see at least col.3, lines 6-21, "For each product saved in the shopping list a bid button is provided, activation of which causes a bid interface to be presented by which the buyer

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may submit a non-binding bid to the seller of that particular product. Alternatively, the bid interface may be in the shopping list itself. According to a specific embodiment, the bid is made available to a number of different sellers offering the same product. Using the shopping list, the buyer may make a number of bids for the same or different products to a number of different sellers simultaneously. ". Submitting of non-binding bids by the buyer corresponds to receiving offer. See also col.4, lines 49-67);

determining an evaluation rule, wherein the evaluation rule is a rule other than a search term input by the buyer ;

matching the seller offer information and the buyer offer information based on the evaluation rule; and

arranging for the seller to sell the item to the buyer.

(For the above three limitations see at least col.3, line 66-col.4, line 23, " *the seller may specify a set of business rules according to which automated responses to the posted bids are generated. The response to a bid may be an acceptance of the bid or a counteroffer. According to various embodiments, market information is displayed along with the list of current bids to help the seller with responding to any or all of the bids, i.e., decision-making support. The seller (or the business rules specified by the seller) can then use the demand data to develop a strategy for responding to one or more bids. If the seller's response is an acceptance of the buyer's bid, the buyer is enabled to complete the transaction if he so chooses. According to a particular embodiment, this is accomplished by means of an HTML link to the seller's web site. Alternatively, the transaction site can make the buyer's payment and shipping information available to the seller.* ". Note: In Ojha, specifying business rules correspond to determining an evaluation rule on the basis of which the sellers and buyers offers are matched and sellers either accept the buyers bid and completion of the transaction by making buyer's payment and providing shipping information to the seller corresponds to arranging for the seller to sell the item

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to the buyer. Also the evaluation rule based on seller's offer is a rule other than a search term input by the buyer. See also col.4, lines 49-67).

Regarding claim 2, Ojha discloses a method for a controller to facilitate a transaction as analyzed and disclosed in claim 1 above. Ojha also discloses determining a buyer offer code based on the buyer offer information; determining a seller offer code based on the seller offer information; and matching the buyer offer code with the seller offer code based on the evaluation rule (see at least col.3, line 66-col.4, line 23, " ***the seller may specify a set of business rules according to which automated responses to the posted bids are generated. The response to a bid may be an acceptance of the bid or a counteroffer. According to various embodiments, market information is displayed along with the list of current bids to help the seller with responding to any or all of the bids, i.e., decision-making support. The seller (or the business rules specified by the seller) can then use the demand data to develop a strategy for responding to one or more bids. If the seller's response is an acceptance of the buyer's bid, the buyer is enabled to complete the transaction if he so chooses. According to a particular embodiment, this is accomplished by means of an HTML link to the seller's web site. Alternatively, the transaction site can make the buyer's payment and shipping information available to the seller.*** ". Note: In Ojha, buyer's bid and seller's acceptance of the bid correspond to the buyer's code and seller's code respectively which are two matched for the completion of transaction based upon business rules. See also col.4, lines 49-67).

Regarding claim 3, Ojha further teaches that the method of claim 2, wherein the buyer offer code is associated with a set of possible items, and said matching comprises determining that the seller offer code is associated with a subset of the set of possible items (see at least col.5, lines 40-55, wherein Ojha teaches that the buyer offer

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information includes a plurality of conditional price offers, which correspond to the buyer offer codes, for a set of possible items, as displayed in Fig.6 and matching with the acceptance of the seller, which corresponds to the seller offer code, with one of the buyer's offers, which corresponds to a subset of the possible items against which the buyer has submitted offers.).

Regarding claim 4, Ojha discloses a method for a controller to facilitate a transaction as analyzed and disclosed in claim 1 above. Ojha also discloses determining an item quality class associated with the item based on the seller offer information, and matching the buyer offer information with the item quality class (see at least col.9, lines 28-45, " *The buyer may further specify the type of laptop (e.g., ThinkPad.RTM. 600) to varying degrees of specificity in the Keyword(s) window. More advanced searching options are also available for more skilled users and more focused searches in which a variety of product criteria may be specified. ... When the buyer finishes specifying the product and clicks on "Go," a search of a proprietary database is initiated in response to which relevant product information is presented in the form of a list of products as shown in interface 500 of FIG. 5. Each entry in the list includes the manufacturer, specific product information, and a product price (e.g., the "Lowest Price" column which displays the lowest list price from among the sellers selling the specific product via the transaction site).* ". Note: Ojha's teaching of specifying the product, e.g., IBM laptop Thinkpad..600...and then matching if the seller 's prices are quoted for the same product as specified by the buyer corresponds to the claimed limitation of associating quality class to the item and matching the seller's offer with the buyer's offer.).

Regarding claim 5, Ojha teaches determining the item quality class is based on at least one of (i) an item category, (ii) at least one item feature, (iii) an item price, (iv)

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an age associated with the item, (v) an item manufacturer, (vi) an item description, (vii) an item image, (viii) an item condition, and (ix) an accessory associated with the item (see at least col.9, lines 28-45, "*The buyer may further specify the type of laptop (e.g., ThinkPad.RTM. 600) to varying degrees of specificity in the Keyword(s) window. More advanced searching options are also available for more skilled users and more focused searches in which a variety of product criteria may be specified. ... When the buyer finishes specifying the product and clicks on "Go," a search of a proprietary database is initiated in response to which relevant product information is presented in the form of a list of products as shown in interface 500 of FIG. 5. Each entry in the list includes the manufacturer, specific product information, and a product price (e.g., the "Lowest Price" column which displays the lowest list price from among the sellers selling the specific product via the transaction site).*" .. Note: specifying IBM laptop Thinkpad..600... covers this limitation).

Regarding claim 6, Ojha shows that the method of claim 4, further comprising: outputting, based on the item quality class, a suggested item price to at least one of (i) the buyer, and (ii) the seller (see at least FIG.5, Fig.8, Fig.9, Fig.11)..

Regarding claim 7, Ojha shows that the method of claim 4, further comprising: outputting, based on the item quality class, a suggested item price range to at least one of: (i) the buyer, and (ii) the seller (see at least FIG.5, "**List price Range:**").

Regarding claims 8, 9, and 10, Ojha discloses a method for a controller to facilitate a transaction as analyzed and disclosed in claim 1 above. Ojha further shows:

that the seller offer information includes a seller price, the buyer offer information includes a buyer price, and said matching comprises matching the seller offer information and the buyer offer information based on the seller price and the buyer price,

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the seller price is less than or equal to the buyer price, and

the seller price is greater than the buyer price.

(see at least see at least col.3, line 66-col.4, line 23, " *the seller may specify a set of business rules according to which automated responses to the posted bids are generated. The response to a bid may be an acceptance of the bid or a counteroffer.*

According to various embodiments, market information is displayed along with the list of current bids to help the seller with responding to any or all of the bids, i.e., decision-making support. The seller (or the business rules specified by the seller) can then use the demand data to develop a strategy for responding to one or more bids. If the seller's response is an acceptance of the buyer's bid, the buyer is enabled to complete the transaction if he so chooses. According to a particular embodiment, this is accomplished by means of an HTML link to the seller's web site. Alternatively, the transaction site can make the buyer's payment and shipping information available to the seller. ". Note: In Ojha, buyer's bid and seller's acceptance of the bid correspond to the buyer's price and seller's price respectively which are two matched for the completion of transaction based upon business rules. The acceptance of the bid by the seller corresponds to the fact that the seller price is equal or lower than the buyer price and if the seller proposes a counteroffer that corresponds to a seller price greater than the buyer price. See also col.4, lines 49-67).

Regarding claim 11, Ojha discloses a method for a controller to facilitate a transaction as analyzed and disclosed in claim 1 above. Ojha further discloses that the seller offer information includes a seller price, the buyer offer information includes a buyer price (this limitation is already covered in claim 8 above), and said matching comprises matching the seller offer information and the buyer offer information based on information not including the seller price and the buyer price (see at least col.5, lines 26-39, " *According to additional embodiments, methods and apparatus are provided for facilitating*

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transactions between a buyer and a plurality of sellers via the Internet. Product information relating to a plurality of products meeting product criteria specified by the buyer is provided via the Internet. One of the plurality of sellers being associated with each of the products. In response to selection of one of the plurality of products by the buyer, the product information corresponding to the selected product is saved to a shopping list associated with the buyer. The shopping list enables the buyer to subsequently negotiate with selected ones of the plurality of sellers for selected ones of the plurality of products for which the product information has been saved. " . Note: Here, Ojha shows that matching is done based upon product criteria and not on matching the prices because the transactions are open and subject to negotiations).

Regarding claim 12, Ojha discloses a method for a controller to facilitate a transaction as analyzed and disclosed in claim 1 above. Ojha also discloses that the said seller offer information comprises receiving the seller offer information from the seller via at least one of (i) a Web site, (ii) the Internet, (iii) a seller computer, (iv) a personal digital assistant, (v) a kiosk, (vi) an electronic mail message, (vii) a telephone, (viii) an interactive voice response unit, and (ix) an operator (see at least FIG.1, and col.8, line 49-col.9, line 9).

Regarding claim13, Ojha discloses a method for a controller to facilitate a transaction as analyzed and disclosed in claim 1 above. Ojha also discloses that the seller offer information comprises at least one of (i) an item category, (ii) an item quality class, (iii) at least one item feature, (iv) a seller price, (v) an age associated with the item, (vi) an item manufacturer, (vii) an item description, (viii) an item image, (ix) an item condition, (x) an accessory associated with the item, (xi) a seller offer period, (xii) seller delivery information, (xiii) seller payment information, (xiv) a seller evaluation rule, and

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(xv) a seller preference (see at least col.9, lines 28-45, " *The buyer may further specify the type of laptop (e.g., ThinkPad.RTM. 600) to varying degrees of specificity in the Keyword(s) window. More advanced searching options are also available for more skilled users and more focused searches in which a variety of product criteria may be specified. ... When the buyer finishes specifying the product and clicks on "Go," a search of a proprietary database is initiated in response to which relevant product information is presented in the form of a list of products as shown in interface 500 of FIG. 5. Each entry in the list includes the manufacturer, specific product information, and a product price (e.g., the "Lowest Price" column which displays the lowest list price from among the sellers selling the specific product via the transaction site). "*.. Note: specifying IBM laptop Thinkpad..600...covers this limitation. Also see col.3, lines 6-58.).

Regarding claim 14, Ojha discloses a method for a controller to facilitate a transaction as analyzed and disclosed in claim 1 above. Ojha also discloses that the said receiving buyer offer information comprises receiving the buyer offer information from the buyer via at least one of (i) a Web site, (ii) the Internet, (iii) a buyer computer, (iv) a personal digital assistant, (v) a kiosk, (vi) an electronic mail message, (vii) a telephone, (viii) an interactive voice response unit, and (ix) an operator (see at least FIG.1 and col.8, line 49-col.9, line 9.

Regarding claim 15, Ojha discloses a method for a controller to facilitate a transaction as analyzed and disclosed in claim 1 above. Ojha also discloses that the buyer offer information comprises at least one of (i) an item category, (ii) an item quality class, (iii) at least one item feature, (iv) a buyer price, (v) an age associated with the item, (vi) an item manufacturer, (vii) an item description, (viii) an item image, (ix) an item condition, (x) a buyer offer period, (xi) buyer delivery information, (xii) buyer payment

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information, (xiii) a buyer evaluation rule, and (xiv) a buyer preference (see at least col.9, lines 28-45, " *The buyer may further specify the type of laptop (e.g., ThinkPad.RTM. 600) to varying degrees of specificity in the Keyword(s) window. More advanced searching options are also available for more skilled users and more focused searches in which a variety of product criteria may be specified. ... When the buyer finishes specifying the product and clicks on "Go," a search of a proprietary database is initiated in response to which relevant product information is presented in the form of a list of products as shown in interface 500 of FIG. 5. Each entry in the list includes the manufacturer, specific product information, and a product price (e.g., the "Lowest Price" column which displays the lowest list price from among the sellers selling the specific product via the transaction site).* " .. Note: specifying IBM laptop Thinkpad..600... covers this limitation).

Regarding claims 19-22, Ojha discloses a method for a controller to facilitate a transaction as analyzed and disclosed in claim 1 above. Ojha also discloses :

the seller offer information comprises at least one transaction requirement and said matching is only performed if the buyer offer information complies with the at least one transaction requirement ,

the seller offer information comprises at least one transaction preference and said matching is based on the transaction preference,

the buyer offer information comprises at least one transaction requirement and said matching is only performed if the seller offer information complies with the at least one transaction requirement , and

the buyer offer information comprises at least one transaction preference and said matching is based on the transaction preference.

(For the above limitations see at least col.5, lines 40-55, wherein Ojha discloses receiving a plurality of conditional purchase offers including an offer price and the same

are transmitted to the sellers with the expectation to receive an acceptance to the conditional purchase offer. Acceptance of a conditional purchase offer corresponds to the requirement to comply with one transaction/transaction preference for both buyers and sellers.

Regarding claims 23 & 24, Ojha discloses a method for a controller to facilitate a transaction including an evaluation rule to match the buyer's offer to the seller's offer as analyzed and disclosed in claim 1 above. Ojha further discloses that the evaluation rule is performed automatically based on revenue management information associated with the controller, wherein the revenue management information comprises at least one of: (i) an amount of profit associated with the controller, and (ii) a number of transactions associated with the controller (see at least col.15, lines 31-67. Note: Business rules correspond to evaluation rules, bid-list spread corresponds to the range of difference between the buyer's offered bid and the seller's suggested list price and corresponds to the revenue management information/profit associated with the controller. Also see col.17, lines 1-38 which specify a minimum gross margin for the sellers, and see col.19, lines 12-67.).

Regarding claim 25, Ojha discloses a method for a controller to facilitate a transaction including an evaluation rule to match the buyer's offer to the seller's offer as analyzed and disclosed in claim 1 above. Ojha also discloses that the evaluation rule is performed manually by a controller operator (see at least col.5, line 56-col.6, line 10, FIG.1 and col.8, line 49-col.9, line 9. Ojha discloses a transaction site including a server 102 which corresponds to the controller and this transaction site displays product criteria and the conditional purchase offer the same for sellers. The step of programming to

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display the product criteria and the conditional purchase offer will involve a server operator to perform this step.

Regarding claims 26 and 27, Ojha discloses that determining the evaluation rule comprises retrieving a predetermined evaluation rule/selecting an evaluation rule from a plurality of possible evaluation rules (see at least col.15, lines 31-67. Note: Business rules /criteria correspond to evaluation rules. Also, see col.17, lines 1-38 which specify a minimum gross margin for the sellers.).

Regarding claims 29-30, Ojha discloses a method for a controller to facilitate a transaction including an evaluation rule to match the buyer's offer to the seller's offer as analyzed and disclosed in claim 1 above. Ojha further discloses that the said determining the evaluation rule is based on a matching objective, which comprises at least one of: (i) increasing a profit associated with the transaction, and (ii) increasing a total number of transactions (see at least col.14, lines 49-col.15, line 67. Note: Business rules correspond to evaluation rules, and bid-list spread corresponds to the range of difference between the buyer's offered bid and the seller's suggested list price and corresponds to the profit associated with the transaction. Also, see col.17, lines 1-38 which specify a minimum gross margin for the sellers, and see col.19, lines 12-67).

Regarding claim 31, Ojha also teaches that the evaluation rule comprises at least one of (i) not matching the buyer with at least one predetermined seller, and (ii) not matching the seller with at least one predetermined buyer (see at least col.3, lines 43-58. Here, Ojha discloses that based upon a certain level of reputation of the buyer, a predetermined seller would not like to respond to the buyer's offer, which implies not

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matching the buyer with at least one predetermined seller. Also, see col.13, lines 17-46.

Also, see col.3, lines 3-58.).

Regarding claim 32, the limitations are already covered in claim 2 above.

Regarding claims 33-34, Ojha discloses a method for a controller to facilitate a transaction including an evaluation rule to match the buyer's offer to the seller's offer as analyzed and disclosed in claim 1 above. Ojha further discloses that the said evaluation rule is based on information associated with the controller comprising at least one of. (i) an amount of profit associated with the transaction for the controller, (ii) a current overall level of profit associated with the controller, (iii) information associated with another controller, (iv) a total number of buyer offers pending in the controller for similar items, and (v) a total number of seller offers pending in the controller for similar items (see at least col.14, lines 49-col.15, line 67. Note: Business rules correspond to evaluation rules, and bid-list spread corresponds to the range of difference between the buyer's offered bid and the seller's suggested list price and corresponds to the profit associated with the transaction. These business rules, corresponding to evaluation rules, are associated with the controller because they are implemented on the transaction site server 102 which corresponds to the controller. See col.7, lines 55-58 for another controller, where the second transaction site corresponds to another controller. Also, see col.17, lines 1-38 which specify a minimum gross margin for the sellers, and col.19, lines 12-67).

Regarding claim 35, the limitation is already covered in claim 2.

Regarding claim 36, Ojha further teaches that the information associated with the seller comprises at least one of: (i) a seller location, (ii) a seller transaction history, (iii) a seller reputation, (iv) a seller payment identifier, (v) demographic information associated with the seller, (vi) psychographic information associated with the seller, (vii) a credit rating associated with the seller, (viii) other offers to sell associated with the seller, (ix) other offers to buy associated with the seller, and (x) an amount of profit associated with the transaction for the seller (see at least col.10, line 31-col.11, line 13 for merchant/seller information including his seller's ratings, col.12, lines 3-28 specifying an amount of profit associated with the transaction for the seller, col.17, lines 1-38 and col.21, lines 41-52, " ...cross-selling" corresponds to other offers to sell.

Regarding claim 37, the limitation is already covered in claim 2.

Regarding claim 38, Ojha further discloses that the information associated with the buyer comprises at least one of (i) a buyer location, (ii) a buyer transaction history, (iii) a buyer reputation, (iv) a buyer payment identifier, (v) demographic information associated with the buyer, (vi) a credit rating associated with the buyer, (vii) psychographic information associated with the buyer, (viii) other offers to sell associated with the buyer, (ix) other offers to buy associated with the buyer, and (x) an amount of profit associated with the transaction for the buyer (see at least col.4, lines 22-23, "*Alternatively, the transaction site can make the buyer's payment and shipping information available to the seller*" , col.3, lines 22-27 disclose a buyer reputation, a buyer payment identifier, and col.21, lines 41-52, " ...cross-selling" corresponds to other offers to buy. Also, see col.3, lines 6-line 58.).

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Regarding claims 39 and 40, Ojha discloses a method for a controller to facilitate a transaction including an evaluation rule to match the buyer's offer to the seller's offer as analyzed and disclosed in claim 1 above. Ojha further discloses that the said evaluation rule is based on information associated with the item and the information associated with the item comprises at least one of: (i) a past popularity of the item, (ii) a current popularity of the item, and (iii) a predicted future popularity of the item (see at least col.10, line 25-col.11, line 4, "*Interface 500 also includes an advanced search interface in which specific parameters associated with the specified product type may be specified. In the example shown, for the product type "Laptop" the processor, the display size, and the speed may be specified to further refine the search.In addition, a "Comments" feature is provided which allows the buyer or other individuals authorized by the buyer to insert personal comments regarding each specific product or merchant. Such comments could include full text messages or, for example, product or merchant ratings. Insertion of comments by the buyer is effected by activation of a "Comments" button in each shopping list entry. This results in presentation of window (not shown) in which new comments may be entered or old comments edited. As discussed above, these comments may be full text messages regarding anything relevant to the listed product or merchant. Comments may also take the form of a rating of the product or merchant according to a scale automatically provided to the reviewers in the reviewer network. According to specific embodiments, the system of the present invention automatically compiles ratings from the buyer and reviewers to create indices which may be used for decision making. The buyer may then exchange comments about various products and merchants via an interface on the web site with his reviewers and others who have been authorized to review by that buyer.*" Note: Specified parameters of the product, such as product type, the processor type, display size, etc, correspond to the evaluation rule based on information of the item and the comments/recommendations/rankings provided by the

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reviewers/buyers provide past popularity, current popularity and predicted future popularity about the items).

Regarding claims 41, 42 and 43, Ojha discloses a method for a controller to facilitate a transaction including an evaluation rule to match the buyer's offer to the seller's offer as analyzed and disclosed in claim 1 above. Ojha further discloses that the said matching comprises: matching the seller offer information with a plurality of buyer offers; and selecting one of the plurality of buyer offers, wherein said selecting is based on priority rankings associated with the buyer offers and wherein the priority rankings are based on at least one of: (i) priority payments, (ii) other seller offers for similar items, (iii) other buyer offers for similar items, (iv) transaction histories, (v) the seller offer information, and (vi) the buyer offer information (see at least col.5, lines 40-55, "*.....A plurality of conditional purchase offers from the buyer to a subset of the plurality of sellers is received. The plurality of conditional purchase offers are transmitted to the subset of the plurality of sellers after receiving a payment identifier. An acceptance responsive to one of the plurality of conditional purchase offers is received from a first one of the plurality of sellers. Negotiations between the buyer and others of the subset of plurality of sellers are automatically terminated in response to the acceptance in accordance with a mutually exclusive group defined by the buyer.*". Note: The buyer's conditional purchase offers are matched with the seller's offers and with the acceptance by the first seller that his offer matches the buyer's offer, balance negotiations with the other seller offers are terminated cover the limitations of the claims 41-43. The selection of the buyer offer is based on the priority ranking of the buyer offer which one is accepted first to match with one of the sellers' offers. Also see col.3, line 6-col.4, line 67.).

Regarding claims 44, 45, and 46, Ojha discloses a method for a controller to facilitate a transaction including an evaluation rule to match the buyer's offer to the seller's offer as analyzed and disclosed in claim 1 above. Ojha further discloses that said matching comprises: matching the buyer offer information with a plurality of seller offers; and selecting one of the plurality of seller offers, said selecting is based on priority rankings associated with the seller offers, and the priority rankings are based on at least one of: (i) priority payments, (ii) other seller offers for similar items, (iii) other buyer offers for similar items, and (iv) transaction histories (see at least col.5, lines 40-55, "*.....A plurality of conditional purchase offers from the buyer to a subset of the plurality of sellers is received. The plurality of conditional purchase offers are transmitted to the subset of the plurality of sellers after receiving a payment identifier. An acceptance responsive to one of the plurality of conditional purchase offers is received from a first one of the plurality of sellers. Negotiations between the buyer and others of the subset of plurality of sellers are automatically terminated in response to the acceptance in accordance with a mutually exclusive group defined by the buyer.*". Note: The buyer's conditional purchase offers are matched with the seller's offers and with the acceptance by the first seller that his offer matches the buyer's offer, balance negotiations with the other seller offers are terminated cover the limitations of the claims 41-43. The selection of the seller offer is based on the priority ranking of the buyer offer which one is accepted first to match with one of the sellers' offers. Also, see col.3, line 6-col.4, line 67.).

Regarding claims 47-48, their limitations are already covered in claims 41 and 42 above and are therefore rejected based on the same rational.

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Regarding claims 50-54, Ojha discloses a method for a controller to facilitate a transaction including an evaluation rule to match the buyer's offer to the seller's offer as analyzed and disclosed in claim 1 above. Ojha further discloses:

the seller is obligated to sell the item subsequent to said matching.

arranging for the seller to provide payment of a penalty amount if the seller does not sell the item.

the buyer is obligated to buy the item subsequent to said matching,

arranging for the buyer to provide payment of a penalty amount if the buyer does not buy the item,

the seller and the buyer are obligated to complete a transaction subsequent to said matching.

(For the above limitations of claims 50-54 see col.21, lines 30-40, " However, it will be understood that negotiations may be made partially or fully binding without departing from the scope of the invention. That is, a payment identifier such as, for example, a credit card or billing account may be requested before a party is allowed to negotiate. If the party attempts to terminate negotiations prematurely, some sort of penalty may be assessed to the identified account. ". Note: If either the seller or buyer do not abide by their offers they are subject to a penalty and are obligated to complete a transaction.).

Regarding claims 55-56, Ojha, discloses a method for a controller to facilitate a transaction including an evaluation rule to match the buyer's offer to the seller's offer as analyzed and disclosed in claim 1 above. Ojha further discloses:

determining an appropriate item price based on the seller offer information (see at least col.9, lines 36-56 and col. 11, lines 14-34, wherein Ojha discloses that the buyer

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determines an appropriate item price based on the seller information and accordingly submits a bid) ;

transmitting information associated with the appropriate item price to the seller; and determining a seller price (see at least col.12, lines 3-68, wherein Ojha discloses that the buyer's bid information is transmitted to the seller leading the seller to determine a seller price to respond to the buyer, which may result in a multi-step negotiation).

determining an appropriate item price based on the buyer offer information (see at least col.5, lines 40-55, wherein the seller determines a seller offer that is an appropriate item price based upon the buyer's offer); transmitting information associated with the appropriate item price to the buyer; and determining a buyer price (see at least col.5, lines 40-55, wherein the seller transmits his price to the buyer leading the buyer to determine his buyer's price in response as a part of negotiation).

Regarding claims 57-59, Ojha, discloses a method for a controller to facilitate a transaction including an evaluation rule to match the buyer's offer to the seller's offer as analyzed and disclosed in claim 1 above. Ojha further discloses:

determining a subsidy, the subsidy being associated with a benefit from a subsidy provider, to be applied to the transaction, wherein said arranging comprises arranging for the seller to provide the item to the buyer in accordance with the subsidy, wherein the benefit comprises a subsidy amount, and said matching is performed by adding the subsidy amount to a buyer price (see at least col.19 lines 12-53), and by subtracting the subsidy amount from a seller price (see col.3, lines 44-57, "*.....In addition, a seller could give preferential treatment, e.g. discounts, to buyers....*".. Note: sellers providing a discount corresponds to subtracting the subsidy from a seller's price).

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Regarding claims 90-93, the functional limitations are parallel to the method steps of claim 1 and is therefore analyzed and rejected on the basis of same rational. As regards hardware and software components, see at least Fig.1, Figs. 3-18, col.8, line 48-col.9, line 9, col.15, lines 31-60, col.19, lines 12-53. Note: the subsidy provider device corresponds to the transaction site/server 102. As regards buyer, seller, buyer offers, seller offers, item category databases, etc, see at least col.2, lines 54-62, "*a proprietary database*".).

Regarding claim 94, all its limitations are already covered in claims 1-2, 83 and 89 and is therefore analyzed and rejected under 35 U.S.C. 102(e) as being anticipated by Ojha based on the same rational. As regards "minimum price" of the seller's offer and the "maximum price" of the buyer's offer please see at least seller's "ask price" in Fig.8; 9, col.9, lines 36-56 and the buyer's conditional purchase offer price, see col.5, lines 40-55.

Claim Rejections - 35 USC § 103

7 The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7.1. Claims 16-18 and 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ojha and further in view of Hess et al. (US Patent 6,415,320), hereinafter, referred to as Hess.

Regarding claims 16-18, Ojha discloses a method for a controller to facilitate a transaction between sellers and buyers by using an evaluation rule as analyzed and disclosed in claim 1 above. Ojha does not disclose the following:

the seller offer information comprises a seller address, the buyer offer information comprises a buyer address and said matching is performed based on the seller address and the buyer address,

the evaluation rule comprises the seller address being within a predetermined distance of the buyer address, and

the evaluation rule comprises the seller address and the buyer address being within a predetermined distance of a third party address.

However, in the filed of same endeavor, Hess discloses all the above three limitations (see at least FIG.6A and col.7, lines 10-27, “ *Providing the location 620 of the item allows prospective buyers to evaluate potential costs relating to shipping, etc.....* ”. Note: asking for the location from prospective buyers and sellers and providing the location of the item corresponds to the fact that the buyer and seller information includes the addresses if the items are to be shipped to the designated destinations and this factor becomes an evaluation rule to match the buyer and seller information. Also if the item is not located at the seller's place and is located at a third location then the item location is required for the obvious reason of knowing shipping cost. In view of Hess, it would have been obvious to a person of an ordinary skill in the art at the time of the applicants' invention to have modified Ojha to incorporate the feature of knowing buyer's , seller's, and third party address, where the item is located because it is required to calculate the shipping costs.

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Regarding claim 49, Ojha discloses a method for a controller to facilitate a transaction between sellers and buyers by using an evaluation rule as analyzed and disclosed in claim 1 above. Ojha does not disclose that said matching is performed periodically. Note: the limitation matching periodically pertains to searching for matching codes as disclosed in the specification, see page 12, lines 15-20. In the filed of same endeavor, Hess discloses harvesting periodically for the matching images (see at least col.6, lines 12-40, col.8, lines 2-6. Harvesting of images refers to retrieving or downloading images for items for sale from various sites and aggregated for presentation to the buyers, see at least col.2, lines 6-17. In view of Hess, it would have been obvious to a person of an ordinary skill in the art at the time of the applicant's invention to have modified Ojha to incorporate the feature of searching matching codes periodically for the obvious reason of checking to match with new/updated seller's offers.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

(i) US Patent 6,397,197 to Gindlesperger (see at least col.4, line 55-col.6, line 16) teaches matching seller's offers with buyer's requirements based on evaluation rules.

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

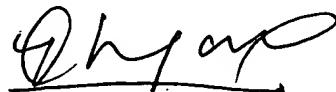
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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yogesh C Garg whose telephone number is 703-306-0252. The examiner can normally be reached on M-F(8:30-4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent A Millin can be reached on 703-308-1065. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Yogesh C Garg
Primary Examiner
Art Unit 3625

YCG
September 29, 2004